

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

2003 DEC -8 A 11:00

UNITED STATES OF AMERICA

VS.

BRIAN J. STUCKE

No. **CR2 03 207**  
**JUDGE HOLSCHUH**  
15 U.S.C. § 77q(a)  
15 U.S.C. § 77x  
18 U.S.C. § 2  
18 U.S.C. § 371

**INFORMATION**

THE UNITED STATES ATTORNEY CHARGES:

**COUNT 1**

1. From on or before July 15, 1999 and continuing thereafter up to and including July 26, 2000, in the Southern District of Ohio and elsewhere, BRIAN J. STUCKE, the defendant, and other persons, whose identities are known and unknown to the United States but who are not named as defendants herein, did unlawfully, willfully, and knowingly conspire, combine, confederate, and agree together and with each other to use means and instruments of transportation and communication in interstate commerce for the purpose of fraud and deceit in the offer and sale of securities, in violation of 15 U.S.C. §§ 77q(a) and 77x and 18 U.S.C. § 2.

**PARTIES TO THE CONSPIRACY, PERSONS AND ENTITIES**

2. At all relevant times,

2.1. National Century Financial Enterprises, Inc., hereinafter referred to as NCFE, was an Ohio corporation, headquartered in Dublin, Ohio, that operated as a financial service holding company which, through its subsidiary corporations, purchased accounts receivable from hospitals, nursing homes, and other health care providers and medical concerns, hereinafter individually

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TRUE AND CORRECT COPY OF THE  
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DATE: 12-8-03

referenced without further identification as Seller.

2.2. BRIAN J. STUCKE, the defendant, was employed as the Director of NCFE's Compliance Department.

2.3. NPF VI, Inc., hereinafter referred to as NPF VI, was an Ohio corporation and a wholly-owned subsidiary of NCFE. NPF VI was formed for the stated purpose of purchasing health care receivables and funding such purchases with proceeds from the offer and sale of securities, that is, health care receivables securitization program notes.

2.4. NPF XII, Inc., hereinafter referred to as NPF XII, was an Ohio corporation and a wholly-owned subsidiary of NCFE. NPF XII was formed on February 22, 1999, as the successor entity to NPF VIII, Inc., for the stated purpose of purchasing health care receivables and funding such purchases with proceeds from the offer and sale of securities, that is, health care receivables securitization program notes.

2.5. National Premier Financial Services, Inc., was an Ohio corporation and a wholly-owned subsidiary of NCFE that purportedly acted as an agent providing administrative services for the health care receivables purchased by NPF VI and NPF XII.

2.6. The Chase Manhattan Bank, and its successor entity also known after November 10, 2001 as JP Morgan Chase Bank, was a financial institution that acted as a trustee for investors holding health care receivables securitization program notes issued by NPF VI.

2.7. Bank One, NA, hereinafter referred to as Bank One, was a financial institution that acted as a trustee for investors holding of health care receivables securitization program notes issued by NPF XII.

2.8. Fitch IBCA, Inc., hereinafter referred to as Fitch, and Duff & Phelps Credit Rating Co., hereinafter referred to as DCR, were companies that each rated for investors one or more of the several series of health care receivables securitization program notes issued by NPF VI or NPF XII.

2.9. Several individuals, among others, identified respectively herein as Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator F, and Conspirator G, identified herein

and elsewhere, were executives at and/or owners of NCFE.

2.10. Coopers & Lybrand, and its successor entity known as PricewaterhouseCoopers, was a national auditing firm engaged by NCFE to perform audits and agreed upon procedures.

2.11. Deloitte & Touche LLP, hereinafter referred to as Deloitte & Touche, was a national auditing firm engaged by NCFE to perform audits.

### MANNER AND MEANS BY WHICH THE CONSPIRACY WAS CARRIED OUT

3. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

3.1. Inclusion of untrue statements of material facts in reports, which untrue statements were designed to and operated to deceive, mislead and defraud investors in the offer and sale of securities, that is, health care receivables securitization program notes.

3.2. Creation of false and fraudulent documents relating to the financial condition of NCFE, and related parties and entities, which false and fraudulent documents were designed to deceive and mislead auditors and to defraud investors in the offer and sale of securities, that is, health care receivables securitization program notes.

3.3. Transfer of money between and among bank accounts of NPF VI and NPF XII, to project an appearance that reserve accounts possessed required funds, which transfers of money were designed to deceive and mislead trustees and to defraud investors in the offer and sale of securities, that is, health care receivables securitization program notes.

3.4. Execution of a scheme and artifice to defraud in the offer and sale of securities, that is, health care receivables securitization program notes, by using proceeds from the offer and sale of such notes for purposes other than for financing purchases of health care receivables.

### OVERT ACTS

4. In furtherance of the conspiracy, and to effect the objects thereof, at least one of the following overt acts, among others, was committed in the Southern District of Ohio:

4.1. On or about July 15, 1999, BRIAN J. STUCKE, the defendant, advised in a memorandum, on the subject of NPF Balances, to Conspirator A, Conspirator B, and Conspirator C that the accounts receivable balances for several NPF programs, including NPF VI and NPF XII, were short in required reserves and equity in an aggregate amount of \$19,000,000.00.

4.2. On or about July 15, 1999, Conspirator A replied to the July 15, 1999, memorandum from BRIAN J. STUCKE, the defendant, indicating, "We will correct after NPF LP is funded on or about June 22, 1999. We are on top of this as is [Conspirator G] and [Conspirator D]." The reply was copied to Conspirator B, Conspirator C, and Sherry L. Gibson.

4.3. On or about July 16, 1999, BRIAN J. STUCKE, the defendant, wrote a memorandum to Conspirator C, with copies to Conspirator A, Conspirator B, Conspirator D and Sherry L. Gibson, and an employee of NCFE, not identified herein, indicating a seller had requested an advance and requesting approval of the wire transfer of funds totaling \$4,000,000.00 to the seller; \$2,000,000.00 of the advance was requested from the NPF VI program.

4.4. On or about July 16, 1999, Conspirator C approved of the wire transfer requested by BRIAN J. STUCKE, the defendant, in the July 16, 1999, memorandum.

4.5. On or about July 19, 1999, Sherry L. Gibson wrote a memorandum to Conspirator B, with copies to Conspirator A, Conspirator C, BRIAN J. STUCKE, the defendant, and two employees of NCFE, not named herein, which provided, in pertinent part:

For June 1999 month end, NPF XI was short in reserves, so the \$5.0 million liability was transferred to [Seller] in NPF XII. This was done in order to bring NPF XI into compliance for month end testing - - and since the \$5.0 million would be repaid, there should be no problem.

On July 8, 1999, the initial funding for [Seller] took place. The Funding Department inquired about the \$5.0 million repayment from the initial funding. Attached is an e-mail documenting the result, namely that the \$5.0 million would NOT be recovered from funding, but would be "alleviated by a Letter of Credit."

As of July 19, 1999, the \$5.0 million is shown on the balance for [Seller] in NPF XII - - which is admittedly a problem. Unfortunately, while [Seller] is a Seller in NPF VI and NPF XI, neither securitization has the available funds to purchase this liability from NPF XII.

As this \$5.0 million issue was supposed to be temporary, no receivables have been created to substantiate the amount in the AS400. Now that we are looking at a long-term situation, how do you wish to proceed?

4.6. On or before July 23, 1999, Sherry L. Gibson received from an employee of NCFE, not identified herein, a summary of adjustments to the June, 1999 Investor Report for NPF XII, which summary of adjustments was also addressed to Conspirator A, Conspirator B, Conspirator C, BRIAN J. STUCKE, the defendant, and another employee of NCFE, not identified herein, and which summary of adjustments detailed financial entries that were overstated and financial entries that were understated, and which contained the following topic header, "To insure compliance, the following adjustments were made to the respective sections of the NPF XII Investor Report."

4.7. On or about July 26, 1999, BRIAN J. STUCKE, the defendant, wrote a "confidential" memorandum to Conspirator A, Conspirator B, and Conspirator C, with copies to Conspirator D, Conspirator G, and Sherry L. Gibson which memorandum provided, in pertinent part:

Attached please find the status of the A/R portfolios as of July 23, 1999.

As of now, we plan to wire funds from NPF VI to NPF XII to fill the shortfall in NPF XII. This will be a partial reversal of last month's transfer from NPF XII to NPF VI.

4.8. On or about August 16, 1999, BRIAN J. STUCKE, wrote a memorandum labeled "CONFIDENTIAL" stating, "[a]s of Friday, August 13, 1999, there is a deficiency across all A/R portfolios of \$8,096,198." The memorandum indicated a shortage of \$9,674,294.00 to the NPF VI program and a shortage of \$412,469.00 to the NPF XII program. This memorandum was copied to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator G and Sherry L. Gibson.

4.9. On or about August 20, 1999, BRIAN J. STUCKE, the defendant, caused to be prepared an investor report for NPF VI, Determination Date July 31, 1999, which contained false financial information. BRIAN J. STUCKE, the defendant, maintained, as business records of NPF VI, a file copy of the false investor report captioned "NPF VI - Reported," that stated false financial information and a file copy of an investor report captioned "NPF VI - Actual" that stated accurate

financial information for NPF VI.

4.10. On or about August 20, 1999, BRIAN J. STUCKE, the defendant, caused to be transmitted by facsimile to Fitch in New York copies of the Investor Report for NPF VI for July, 1999, which contained false financial information. The report sent to Fitch had previously been signed by Conspirator A.

4.11. On or about August 23, 1999, BRIAN J. STUCKE, the defendant, caused to be transmitted by facsimile to The Chase Manhattan Bank in New York copies of the Investor Report for NPF VI for July 1999, which contained false financial information. The report addressed to The Chase Manhattan Bank had previously been signed by Conspirator A.

4.12. On or about August 27, 1999, BRIAN J. STUCKE, the defendant, wrote a memorandum to Conspirator C, with copies to Conspirator A, Conspirator B, Conspirator D, Sherry L. Gibson, and two employees of NCFE, not identified herein, indicating a seller had requested an advance and requesting approval of the wire transfer of funds totaling \$3,000,000.00 from the NPF VI program to the seller.

4.13. On or about August 27, 1999, Conspirator C approved the wire transfer requested by BRIAN J. STUCKE, the defendant, in the August 27, 1999, memorandum.

4.14. On or about August 29, 1999, Conspirator B transmitted a memorandum to BRIAN J. STUCKE, the defendant, that provided, in pertinent part:

“VERY CONFIDENTIAL”

GREETINGS FROM HAWAII!

PLEASE GIVE ME SOME TYPE OF REVIEW ON A MONTHLY BASIS OF THE SPECIFIC PROBLEMS YOU'RE HAVING WITH THE INVESTOR REPORT. OBVIOUSLY MAKE IT CONFIDENTIAL ----- I WOULD LIKE TO GET AS MANY OF THESE PROBLEMS CLEANED UP AT THE "SOURCE" AND NOT ALLOW THEM TO CONTINUE MONTH AFTER MONTH. - - - BUT I NEED TO KNOW MORE OF WHAT THEY ARE. SPECIFICALLY, WHAT ARE YOU HAVING TO CHANGE BEFORE THE REPORT GOES OUT THE DOOR?

4.15. On or about September 8, 1999, BRIAN J. STUCKE, the defendant, addressed a

memorandum to Conspirator B, with copies to Sherry L. Gibson and two employees of NCFE, not identified herein, to which BRIAN J. STUCKE, the defendant, attached "Actual" and "Reported" versions of the July, 1999 NPF VI investor report, and in which BRIAN J. STUCKE, the defendant, provided a synopsis of the changes made to the "Reported" investor report.

4.16. On or about September 20, 1999, BRIAN J. STUCKE, prepared a memorandum labeled "CONFIDENTIAL" stating, "[a]s of Friday, September 17, 1999, there is a deficiency across all A/R portfolios of \$12,697,533." The memorandum indicated a shortage of \$8,009,382.00 to the NPF VI program and a shortage of \$4,685,605.00 to the NPF XII program. This memorandum was addressed to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator G and Sherry L. Gibson. Attached to this memorandum was a summary of portfolios dated September 17, 1999.

4.17. On or about September 21, 1999, BRIAN J. STUCKE, the defendant, wrote a memorandum regarding "Cash In vs. Cash Out." The memorandum indicates that five (5) sellers were contributing to a large part of the shortfall and specifically states,

Attached please find a comparison of cash in vs. cash out for September, 1999. Pursuant to my memorandum dated 9/20/99 advising you of the \$12,697,533 shortage in the portfolios, this shortage is due to both poor collections and uncollateralized advances. *Cash out exceeds cash in by \$34,000,000 during September, 1999.*

(emphasis in original)

The memorandum was addressed to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator G and Sherry L. Gibson.

4.18. On or about September 24, 1999, BRIAN J. STUCKE, the defendant, prepared a memorandum labeled "CONFIDENTIAL" indicating, "[a]s of 9/24/99, the portfolios are short by **approximately \$18,300,000. Please advise how this will be resolved prior to October 1, 1999.**" (emphasis in original). The memorandum indicated a shortage of \$9,293,100.00 to the NPF VI program and a shortage of \$9,201,005.00 to the NPF XII program. This memorandum was addressed to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator G and Sherry L. Gibson.

4.19. On or about October 15, 1999, BRIAN J. STUCKE, the defendant, wrote a

confidential memorandum to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator G, and two employees of NCFE, not identified herein, in which BRIAN J. STUCKE, the defendant, advised: (1) certain reserve accounts of NPF XII were collectively short by \$13,882,456.00 on September 30, 1999; (2) the September, 1999 Investor Report for NPF XII would show an event of default; and, (3) as of October 15, 1999, the cash position of accounts receivable portfolios were deficient by \$43,776,972.00.

4.20. On or about the period October 15, 1999, through October 19, 1999, Conspirator A addressed a handwritten note to BRIAN J. STUCKE, the defendant, and an employee of NCFE, not identified herein, advising that Conspirator A had "a number of ways to correct [the] problem" with the September, 1999 Investor Report for NPF XII.

4.21. On or about October 19, 1999, Conspirator A addressed a memorandum to Conspirator B, Conspirator C, BRIAN J. STUCKE, the defendant, Conspirator G, Sherry L. Gibson and an employee of NCFE, not identified herein, in which Conspirator A stated, in pertinent part:

As a follow up to [BRIAN J. STUCKE, the defendant,]'s memo, I did meet with [an employee of NCFE] to review with her the kinds of things that we need to do before the end of the month to insure our Investor reports are O.K. The September problem has been handled by adjusting downward the accounts receivable, and we will be within compliance on our reporting area. Any of you who wish to review that methodology with me on an individual basis may do so.

On a go-forward basis, it is no secret that we have three problem areas that are contributing to our fall for the month. This is not a circumstance in which none of us are not aware of the problem. All of us are doing actions which should lend appreciable support to correcting these problems during the course of the month. The purpose of this memorandum is just reviewing briefly the action steps that each of us individually have taken which hopefully in concert will end up with the desired result. . . .

In addition to these activities we are pulling out all stops to monetize NCFE corporate cash as a result of book X transactions. [Two employees of NCFE] have been following this project. Under their tutelage, they anticipate before October 31<sup>st</sup> to net \$5.9 million from the sale of Notes to Provident and Huntington existing lines. This will be in addition to those funds that we would receive during the month. There's a lot of containerized information within this memorandum, should anyone have any questions, please feel free to call. On this subject, let's keep the memo's to a minimum.



4.22. On or about October 25, 1999, BRIAN J. STUCKE, the defendant, addressed a confidential memorandum to Conspirator A, with copies to Conspirator B, Conspirator C, Conspirator D, Conspirator G, and Sherry L. Gibson in which BRIAN J. STUCKE, the defendant, advised the NPF portfolios, including NPF VI and NPF XII, were short by a total of \$55,164,209.

4.23. On or about October 26, 1999, BRIAN J. STUCKE, the defendant, addressed a confidential memorandum to Conspirator A, with copies to Conspirator B, Conspirator C, Conspirator D, Conspirator G, and Sherry L. Gibson which provided, in pertinent part:

In an effort to meet the compliance requirements in the A/R portfolios despite a considerable cash shortage projected at month end October, 1999, I have calculated the *minimum* cash required in the portfolios to avoid an event of default, which would result in early amortization of the portfolio(s). Events of default include failing the Equity Requirement or the Collateral Coverage Test. Reporting the Credit and Offset Reserve balances below their required percentages is not an event of default. Therefore, the balances in these reserves have been reduced to the amount needed to meet the collateral coverage test only. ***Calculated at this level, the shortage is reduced from \$51,500,00 to \$36,200,000.***

One of the following options may be used to remedy this situation:

1. On Thursday, October 28, 1999, NCFE will meet the minimum compliance requirements in NPF VI and NPF XI, for which the Trustee is Chase Manhattan, by wiring approximately \$36,000,000 from NPF XII to NPF VI and NPF XI. . . . The cut off for investor reporting for October, 1999, in NPF VI and NPF XI (Chase Manhattan) will then be October 28, 1999 instead of October 29, 1999.

On Friday, October 29, 1999, NCFE will wire the \$36,000,000 from NPF VI and NPF XI back to NPF XII. It will also be necessary to wire approximately \$5,800,000 from NPF WL to NPF XII and \$1,100,000 from NPF WL to NPF LP on that day. The cut off for investor reporting for October, 1999, in NPF XII, NPF LP and NPF WL will then be the regular date of October 29, 1999. These three portfolios are managed by the same Trustee, Bank One.

This option is probably the best one, although there is a concern that the Trustee(s) will question such a large amount of cash leaving/coming in to the portfolio(s).

2. The majority of the problem (\$34,000,000) is in NPF VI. NCFE allows NPF VI to remain noncompliant in anticipation of one or more of the following: 1) a new series in NPF VI anticipated later in November; 2) funds from sources outside the a/r portfolios. . . All

other portfolios would meet minimum compliance requirements through intercompany wires much as described in Option 1; however, the amount of cash that would need to be moved would be considerably less and it is doubtful that the Trustee would question it. The fact that NPF VI would technically be in default as of October 29, 1999 would have to be addressed in some manner with the investors/trustees. (emphasis in original)

4.24. On or about October 27, 1999, BRIAN J. STUCKE, the defendant, addressed a memorandum to Conspirator A and Conspirator G, with copies to Conspirator B, Conspirator C, Conspirator D, and Sherry L. Gibson which referenced the BRIAN J. STUCKE, the defendant, confidential memorandum of October 26, 1999, and which stated, in pertinent part: "DUE TO THE MAGNITUDE AND NATURE OF THE PROBLEM, WE WILL NOT TAKE ANY FURTHER ACTION REGARDING MONTH END UNTIL WE RECEIVE SPECIFIC INSTRUCTIONS."

4.25. On or about October 28, 1999, BRIAN J. STUCKE, the defendant, addressed a memorandum to Conspirator A, Conspirator B, and Conspirator C with copies to Conspirator D, Conspirator G and Sherry L. Gibson and stated: "After conversations with [Conspirator A] and [Conspirator G], Compliance has been instructed to hold over the month end tests through Monday, November 1, 1999. This means that we need to abstain from future advances until at least Tuesday, November, 2, 1999."

4.26. On or about November 15, 1999, BRIAN J. STUCKE, the defendant, addressed a memorandum to Sherry L. Gibson with copies to Conspirator A, Conspirator B, Conspirator C, Conspirator D, Conspirator F, and Conspirator G, which provided, in pertinent part:

Currently, across all NPF funding programs, the reserve and equity balances are deficient by over \$100 million. The funds required to meet all the test equals \$286 million while the sum of funds available as of November 15, 1999, is \$185 million.

The proposed solution for the cash shortfall is the \$200 million Series 1999-3 securitization scheduled to close in NPF XII, Inc. during November 1999. However, it needs to be noted that this solution will be a short-term at best. With the increased reserve requirements associated with Series 1999-3 plus with the projected initial fundings and advances, all of the \$200 million will be used by the end of November 1999. Listed below is the scheduled use of the \$200 million.

\$72,000,000	-Shortage in NPF VI reserves and equity
24,000,000	-Shortage in NPF XII reserves and equity
5,000,000	-Shortage in NPF XI reserves and equity
34,000,000	-Additional reserves required for NPF XII 1999-3
50,000,000	-Initial Fundings
<u>15,000,000</u>	-November advances and trustee fees
\$200,000,000	

4.27. On or about November 22, 1999, BRIAN J. STUCKE, the defendant, caused to be transmitted by facsimile to The Chase Manhattan Bank in New York and to Fitch in New York copies of the Investor Report for NPF VI for October, 1999, which had previously been signed by Conspirator A and contained false financial information.

4.28. On or about December 13, 1999, Conspirator A addressed a memorandum to Conspirator B, Conspirator D, BRIAN J. STUCKE, the defendant, Conspirator G, Sherry L. Gibson and several employees of NCFE, not identified herein, in which Conspirator A outlined a new coding procedure for internal tracking of advances made to clients while NCFE waited for collateral to support the advances, and in which Conspirator A explicitly stated: "This category should not be confused with proforma funding, nor should it have the same account number."

4.29. On or about January 17, 2000, BRIAN J. STUCKE, the defendant, addressed a memorandum to Sherry L. Gibson with copies to Conspirator A, Conspirator D, Conspirator F and Conspirator G, in which BRIAN J. STUCKE, the defendant, advised reserve and equity accounts across NPF Funding Programs were collectively deficient by more than \$31 million.

4.30. On or about January 27, 2000, BRIAN J. STUCKE, the defendant, addressed a memorandum to Conspirator A, Conspirator B, and Conspirator C, with copies to Conspirator D, Conspirator F, Conspirator G, and Sherry L. Gibson in which BRIAN J. STUCKE, the defendant, stated:

As of January 26, 2000, the NPF Funding Programs are deficient of cash reserves by over \$40 million. In order to pass the collateral, reserve and equity tests in each Funding Program, the testing will be held on two separate days for Monthend January 2000. For NPF VI and NPF XI, the accounts will be tested on January 31, 2000. Then, on February 1, 2000, the accounts will be tested for NPF XII, NPF WL, and NPF LP. This will allow NCFE to shift the necessary cash between Funding Programs. Therefore, it is important to stop

advancing cash until February 2, 2000.

4.31. On or about February 23, 2000, BRIAN J. STUCKE, the defendant, addressed a memorandum to Conspirator A, Conspirator B, and Conspirator C, with copies to Conspirator D, Conspirator F, Conspirator G, and Sherry L. Gibson which provided in pertinent part:

As of February 22, 2000, the Funding Programs are collectively short by over \$72 million. Additionally, it is now evident that the NPF XII Series 2000-01 \$100 million notes will not fund before the end of February. Taking these two issues into account and the fact that the programs are losing about \$11.0 million a week; the programs will be short by \$85 to 90 million by the end of February.

In recent months, NCFE has cured the shortages by wiring funds between the Chase programs (NPF VI and XI) and the Bank One programs (NPF XII, LP and WL) and testing the requirements on different days. Previously, the maximum amount needed to cure the shortages has not exceeded \$45 million; this month will require more than double that amount. It concerns me that the Trustees may question these large wires. They already questioned the accuracy of the lesser wires during the previous months. I would appreciate any thoughts or feedback concerning this issue.

On a related topic, after the interest, trustee fees, and NCFE's income are withdrawn from the Funding Programs during the first week of March, they will be short by over \$100 million. Would it be possible to increase the NPF XII Series 2000-01 to \$150 or \$200 million to offset the advances that will be made in March and the months ahead?

4.32. On or about February 23, 2000, BRIAN J. STUCKE, the defendant, addressed a memorandum to Conspirator A, Conspirator B, and Conspirator C with copies to Conspirator D, Conspirator F, Conspirator G and Sherry L. Gibson regarding clarifications to NPF balances. The memorandum states that, "...the majority of the cash shortfall is concentrated in NPF VI, NPF XI and NPF XII" programs. The memorandum further states that, "...NCFE has a \$26 million pool of funds that can be used to cure the \$29 million shortage in NPF VI and the \$36 million shortage in NPF XII."

4.33. On or about May 31, 2000, BRIAN J. STUCKE, the defendant, addressed a memorandum to Sherry L. Gibson which listed as its subject: "WE ARE OUT OF MONEY," and in which memorandum BRIAN J. STUCKE, the defendant, stated:

On June 1, 2000, after NCFE pays the monthly interest, trustee fees and withdraws income from the Funding Programs; there will be a


total of \$230 million left in the Funding Programs which is over \$113 million short. Even with splitting the month end tests on the first and last business day of the month, a minimum of \$190 million is needed to pass the tests. Based on last few months, the programs collectively fund \$50 million more than they collect. With this trend holding true, we will not have enough cash in the trust accounts to pass the June month end Compliance test. Please advise?

4.34. On or about July 6, 2000, BRIAN J. STUCKE, the defendant, addressed a memorandum to Sherry L. Gibson regarding the status of the funding programs. Regarding five funding programs, including NPF VI and NPF XII, the memo indicates that NCFE had an actual total balance of \$185,255,751.00 and a required total balance of \$344,597,675.00 for the five programs, and a total shortage of \$159,341,924.00 for the five programs. The memorandum requests, “[p]lease instruct on how to handle this problem.”

4.35. On or about July 26, 2000, BRIAN J. STUCKE, the defendant, addressed an email to Sherry L. Gibson, stating,

The books are now down to \$180 million of total cash. This translates into a need of at least \$20 million to meet monthend requirements. This is assuming the problem does not get worse in the next 5 days[.] Any insight as to how this will be remedied???

In violation of 18 U.S.C. § 371.

  
\_\_\_\_\_  
GREGORY G. LOCKHART (0007791)  
United States Attorney